



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF MARCH 27, 2014**

**CALL TO ORDER:** Chairperson Pentaleri called the meeting to order at 7:00 p.m.

**PRESENT:** Chairperson Pentaleri, Commissioners Bonaccorsi, Jones, Leung, Reed

**ABSENT:** Dorsey, Karipineni

**STAFF PRESENT:** Wayne Morris, Principal Planner  
Prasanna Rasiah, Deputy City Attorney  
Steve Kowalski, Associate Planner  
Joel Pullen, Associate Planner  
Jessica von Borck, Urban Initiatives Manager  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Napoleon Batalao, Video Technician

**APPROVAL OF MINUTES:** None

**DISCLOSURES:** **Commissioner Reed** drove by the site and spoke with Dirk Lorenz regarding Item No. 1.  
**Vice Chairperson Jones** drove by the site of Item No. 2.  
**Commissioner Leung** spoke with Dirk Lorenz and drove by the sites of Items No. 1 and No. 2.  
**Commissioner Bonaccorsi** texted with Dirk Lorenz and held a conversation with the Magnussen Lexus Sales Manager regarding Item No. 1 and drove by the sites of Items No. 1 and 2.

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBER 2.

IT WAS MOVED (REED/JONES) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBER 2.

- Item 2. **GWALANI GENERAL PLAN AMENDMENT AND PLANNED DISTRICT – 38437 Mission Boulevard - (PLN2014-00153)** - To consider a General Plan Amendment to change the land use designation of a 0.51-acre site from Medium-density Residential to General Commercial and a Rezoning from R-3-18 (Multifamily Residence) to Preliminary and Precise Planned District P- 2014-153 to allow the demolition of a single-family residence and construction of a 5,200-square-foot medical office building, and to consider a Mitigated Negative Declaration prepared for the project pursuant to the requirements of the California Environmental Quality Act (CEQA).

RECOMMENDED THAT THE CITY COUNCIL:

ADOPT THE DRAFT MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PLAN AND FIND ON THE BASIS OF THE WHOLE RECORD BEFORE IT (INCLUDING THE INITIAL STUDY AND ANY COMMENTS RECEIVED) THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

FIND THAT THE GENERAL PLAN AMENDMENT CONFORMS WITH AND CONTAINS THE REQUIREMENTS PROVIDED FOR IN THE CITY'S PLANNING PROCESSES, CONSTITUTES A SUITABLE AND LOGICAL CHANGE IN THE PLAN FOR PHYSICAL DEVELOPMENT OF THE CITY OF FREMONT, AND IS IN THE PUBLIC INTEREST;

AND

FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE LAND USE DESIGNATION, AND GOALS, OBJECTIVES AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE, HOUSING, AND COMMUNITY CHARACTER ELEMENTS AS ENUMERATED WITHIN THE STAFF REPORT;

AND

FIND THE PROJECT AS DEPICTED IN EXHIBIT "D," (PRELIMINARY AND PRECISE SITE PLAN, ARCHITECTURAL ELEVATIONS, FLOOR PLANS, AND LANDSCAPE PLANS), FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

AND

ADOPT A RESOLUTION APPROVING A GENERAL PLAN AMENDMENT TO CHANGING THE LAND USE DESIGNATION FROM MEDIUM-DENSITY RESIDENTIAL TO GENERAL COMMERCIAL, AS DEPICTED ON EXHIBIT "B" (GENERAL PLAN AMENDMENT MAP)

AND

INTRODUCE AN ORDINANCE APPROVING A REZONING FROM R-3-18 TO PRELIMINARY AND PRECISE PLANNED DISTRICT, P-2014-153 AS DEPICTED ON EXHIBIT "C" (PLANNED DISTRICT REZONING MAP) AND

APPROVING THE PRECISE PLAN AS SHOWN ON EXHIBIT “D” BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT "E;"

AND

DIRECT STAFF TO PREPARE AND THE CITY CLERK TO PUBLISH A SUMMARY OF THE ORDINANCE.

The motion carried by the following vote:

AYES: 5 – Bonaccorsi, Jones, Leung, Pentaleri, Reed

NOES: 0

ABSTAIN: 0

ABSENT: 2 – Dorsey, Karipineni

RECUSE: 0

## **PUBLIC/ORAL COMMUNICATIONS**

None

## **PUBLIC HEARING ITEMS**

- Item 1. **CARMAX – 44100 Christy Street - (PLN2014-00059)** - To consider a General Plan Amendment to change the land use designation of a 16.3-acre site from Industrial - Tech to Commercial – Regional, a Rezoning from I-R, Restricted Industrial to Preliminary and Precise Planned District P-2014-59, and a Preliminary Grading Plan to allow the construction of a new 51,503- square-foot automobile dealership on the site of a former cement plant, and to consider a Mitigated Negative Declaration prepared for the project pursuant to requirements of the California Environmental Quality Act (CEQA).

### **NOTES AND CORRECTIONS:**

**\*Modifications appear in *italics*, new text is underlined, and deleted text appears as ~~strikethrough~~.**

Staff requests that the following corrections be included in the Staff Report, Planned District Guidelines (Exhibit “E”), and Conditions of Approval (Exhibit “F”):

### **Staff Report:**

Page 2, Item #5 under “Procedure for Tonight’s Hearing” is modified as follows: “Allowing the removal and replacement of ~~thirty (30)~~ seven (7) protected trees pursuant to FMC Section 18.215.070.”

Page 3, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence is modified as follows:

“The sign at the first driveway along Christy Street would measure 10 feet in height, while the sign at the second driveway would measure seven feet, with both subject to separate approval of a Master Sign Program by the Zoning Administrator.”

Page 9, finding (e) is modified with the addition of the following sentence at the end of the 2<sup>nd</sup> paragraph:

*“These signs would be subject to separate approval of a Master Sign Program by the Zoning Administrator.”*

Page 13, Recommendation #10, is modified as follows:

“Direct staff to prepare and the City Clerk to publish a summary of the ~~resolution and ordinance.~~”

#### **Exhibit “E” - Planned District Guidelines:**

Pages 4-5, Item (g) under “Processing Procedure” is modified as follows:

*“Reserved. The approval term for the site plan shall remain in effect for a minimum of 4 years, with options to extend further at the owner’s discretion.”*

Page 12, “Freeway Identification Signs” section is modified as follows:

“The final design and location of the sign shall be subject to approval of a conditional use permit ~~Community Development Department staff approval during the building permit review process.~~”

#### **Exhibit “F” - Conditions of Approval:**

Page 1, under “Findings” heading is modified as follows:

“The following findings are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated March ~~13,~~ 27, 2014, incorporated hereby.

Page 2, finding (e) is modified with the addition of the following sentence at the end of the 2<sup>nd</sup> paragraph:

*“These signs would be subject to separate approval of a Master Sign Program by the Zoning Administrator.”*

Page 8, Condition #21 is modified as follows:

“The applicant shall submit an updated title report to the City showing that there ~~is~~ are no existing easements within ~~the project area~~ any building footprints prior to issuance of a building permit.”

**Associate Planner Kowalski** explained that the project would be constructed in two phases. The first phase would include an approximately 10,000 square-foot sales area, a 5,500 square-foot service shop, a 355-space vehicle display area and a 218-space parking area for employees and customers. A carwash and refueling facility for the dealership’s inventory would also be installed. The applicant would also fill in an existing 4.2 acre detention basin located at the southeast corner of the site and replace it with a new underground piped storm drainage system. The second phase would occur once the service department became well established and would add 26,320 additional square feet of shop area and 81 additional parking spaces. Thirty trees would also be removed and new trees would be planted both on the site and within the Christy Street right-of-way.

This proposal would be consistent with the General Plan in that it would result in reinvestment of the area by redeveloping a vacant former industrial site with a new commercial development that would be compatible with other regional-serving commercial uses in the area, which included the Pacific Commons shopping center and the Fremont Auto Mall. This infill site was already served by most major utilities and a public street that connected it directly to the Auto Mall Parkway, which carried significant volumes of consumer traffic to the commercial developments in the area.

While the proposed Amendment would be the result of conversion of Industrial land to Commercial, the use was expected to be a large sales tax generator for the city. The Auto Mall Planned District had provided the basis for the Planned District guidelines that the Applicant had used for this proposed project. With only a few minor exceptions, which take into account the proposed dealership's isolated location from the other dealerships, they are the same as those governing the dealerships in the Auto Mall.

**Commissioner Bonaccorsi** noted that one of the findings was that an extraordinary benefit to the City would occur, defined as an increased sales tax benefit. Other than the assertion that there would be an increased sales tax benefit to the City, had any independent economic study or peer-reviewed study been undertaken, either by the Applicant or by staff, to support that conclusion? Was an analysis performed where the Applicant was located outside an existing auto mall and what the effects of that sales tax revenue had been on that auto mall's sales tax generation?

**Principal Planner Morris** stated that he was not aware of any studies. He introduced **Economic Development Manager Christina Briggs** who might be able to answer his question.

**Economic Development Manager Briggs** stated that the research done had been with the sales tax consultant, HDL. Across all examples that they had surveyed, CarMax was among the top 20 sales tax generators in almost every city in which they were located in California. They would probably rank in the City's Top 10 if not the Top 5. Regarding tax generation when outside an auto mall, an example was of a CarMax in Burbank, California, with an auto mall located in the neighboring city of Glendale. The sales for that auto mall moved up during the quarter that CarMax opened as compared to the same quarter in the previous year.

**Commissioner Bonaccorsi** asked if the consultant was in attendance, so questions could be asked about that study.

**Economic Development Manager Briggs** said that the consultant was not in attendance.

**Vice Chairperson Jones** asked if seven trees, rather than 30, would be removed.

**Associate Planner Kowalski** replied that seven trees were protected by City ordinance that were on the Applicant's private property. Twenty-three trees were within the City's right-of-way that would also be removed and replaced in accordance with City standards. The City's Tree Preservation Ordinance did not extend protection to trees within the right-of-way but those trees would still be required to be replaced.

**Chairperson Pentaleri** opened the Public Hearing.

**Keith Henderson**, CarMax Auto Superstores Real Estate Representative, stated that CarMax opened the first store in Richmond, VA, in 1993 and was currently composed of 130 stores throughout the country in 52 different markets. They were a publicly traded Fortune 500 Company and were rated one of the top 100 companies to work for by Fortune Magazine. Good quality jobs were brought to the areas they were located in. They had been named as one of the most admired companies in the automotive business; they sold about 450,000 vehicles across the country. The City of Fremont would be one of the first cities in the Bay Area in which a CarMax would be located. Employees were encouraged to move up within the company, competitive compensation packages were offered, and the CarMax Foundation allowed associates to give back to the local community,

**Amanda Steinle**, Centerpoint Integrated Solutions Consultant, displayed a site plan that showed the site adjacent to Freeway "sic, I-580 (I-880)," Auto Mall Parkway and Christy Street. It showed the existing storm water pond, and the sales inventory lot (which was oriented towards the interstate) with a security gate. The vehicle staging area was for cars that needed to be processed before they were put on the sales lot. It was completely screened by a six-foot masonry wall with landscaping on the exterior. The sales building and sales lot would be oriented towards the interstate and towards the customer and employee experience. The future Phase II expansion was shown, along with the expansion next to the car wash which would allow room for the Applicant to hold private auctions, which would be by invitation only. A certain criteria must be met to be invited. About two acres would not be developed. Signs would be seen from "sic, 580 (880)" and at the entrances to the site. Trees would be planted in landscape islands in the parking area. The blue peaked entry elements were a part of CarMax's brand. Comments from the Planning Commissioners on the design of signs would be appreciated.

Phase I would bring between 85 and 100 skilled positions to the area and Phase II would bring 140 to 150 jobs. No stores have ever been closed, as they were able to react to market demand faster than other retailers. If a certain car type sold better in Fremont or the Bay Area, then the inventory could be changed to meet demand.

**Commissioner Reed** stated that the City would be honored to have the applicant locate in Fremont. He asked the following questions:

- What other locations were looked at and had an Auto Mall site been considered?

*Mr. Henderson replied that an auto dealer row would have been preferred, but this site was available, it met their criteria, had interstate frontage and it was not so far from the auto cluster that they could not be a part of it.*

- If a larger site had been available within the Auto Mall, would they have been more inclined to locate there?

*Yes. They thought this site was close enough.*

- Of the 85 to 100 skilled positions in Phase I, what percentage of people would be hired locally?

*Four managers would be brought in, initially, to oversee the hiring and initial setup. They would probably include a General Manager, Service Manager, and Sales Manager who understood how CarMax worked. No one else would be brought in. Everyone else would be hired from the surrounding areas.*

**Commissioner Bonaccorsi** asked the following:

- Was interstate visibility a predominant motivating factor for this site?

*Mr. Henderson stated that many factors were considered, especially in this large market and visibility to a large number of cars was important.*

- Exhibit E in the Design Guidelines said that the designs would be subject to the Auto Mall Association. The Staff Report gave the impression that there would be some guidance, but it seemed more informational, that they would try to abide by it. Did they plan to become a member of the Auto Mall Association?

*He clarified that they would not be specifically held to those guidelines, but as part of the process, they had done only one or two things that were different from those guidelines. They wanted to be consistent with the other auto dealerships. At this point in the process, they did not normally look into auto mall associations. However, it would be up to the store management.*

- Were they required to be part of the Auto Mall Association?

*Not that he was aware of.*

- Exhibit E, Auto Mall Joint Tenant Signs, page 64 said, “At their discretion, CarMax may add a tenant panel on the Auto Mall joint tenant sign that will conform to the City’s sign ordinance and will be coordinated with the Auto Mall Association.” Was he familiar with that language?

*Yes.*

- Did they sell both new and used vehicles?

*They were primarily in the used vehicle business, but they had a few new car dealerships, which were not a line they wished to stay in.*

- Would they be precluded from having new car sales?

*No.*

- What other new car models were sold at other CarMax stores?

*A Toyota dealership was located in Maryland, along with a few other sites where in order to buy the site, the new car dealership had to be purchased. At this point, they were not expecting to expand into that market.*

- Is CarMax subject to the same dealership restriction requirements as new car dealerships were subject to?

*All locations were corporately owned. There were no franchises. Any kind of vehicle a customer wanted could be carried on the lot.*

- In theory, could a customer buy a new Toyota through CarMax?  
*They could not specifically order it from CarMax. Their typical used vehicle was about six years old with 60,000 miles. They would not call Toyota and order one from them.*
- If CarMax was not subject to the dealer franchise restrictions, because of the corporately-owned facilities, did they have the ability to have other new vehicles sold out of that CarMax facility in Fremont?  
*There might be an opportunity to transfer a vehicle from another dealership to this one, but the typical car buying experience was not through special orders.*
- Who was the typical CarMax customer? Why did they come to CarMax and what did they expect to get?  
**Mr. Moyers**, Vice President of Real Estate of CarMax, stated that they were not subject to franchise laws, because they were not new car dealers. They had gone into the occasional new car business to compete with Auto Nation when they started. They have about seven new car businesses in Maryland and in Kenosha, WI. The last one was probably bought in early 2000. They have no intentions of expanding into the new car business. Toyota would not allow them to ship a car from a Toyota dealership to any of their used locations. Their intention was not to compete on a new car basis with anyone in the relevant market. They were a used car dealer. It was a very, very, minor part of their business.
- So their dominant market share was selling used cars.  
*Absolutely. It was about 95 percent.*
- As shown in one of the slides, was No. 3 the Roseville site?  
*Yes, but they were not in any auto malls in California, generally, because selling used cars was allowed only as an accessory. They were adjacent to the auto mall in Roseville, backed up to the wall. The largest sites were four or five acres with a wall around it.*
- Why did most auto malls not want them?  
*Typically the CC&Rs prohibit used sales, only.*
- Had anyone in the CarMax contingent reached out to any of the Auto Mall dealers for their input, their views as to whether CarMax would be a good neighbor, whether they wanted CarMax, whether they had concerns.  
**Mr. Henderson** said that they had not. It was something that would occur as the store opening got closer. The local managers would decide what they wanted to get involved in.
- When going through approval processes in other jurisdictions, had they ever been called upon to perform an economic study to satisfy the policy makers that your business model did not detract from the sales tax revenue of existing new dealerships?  
**Mr. Moyers** said that they had not.

**Commissioner Leung** stated that the City had just updated the General Plan a couple of years ago and this project was asking for a change in the General Plan. It was an honor that CarMax had chosen Fremont for its flagship store in the area. The problem



was to figure out how the integrity of the newly updated General Plan could be kept and still accommodate CarMax's needs. The issues were:

- Sometimes a slightly different business did not mean there would be “a zero sum game.” More business could be brought in for everyone.  
*Mr. Henderson stated that other car dealerships were usually pretty happy, once they were established. A CarMax dealership would typically draw from a larger area. If someone wanted to buy a car and they came to CarMax, chances were they also checked out the other car dealerships in the area, which was a good thing. Service was not a huge part of their business, so much of the warranty and repair work was sent to the local dealerships, which was helpful for them.*
- Were there any alternate sites in the City that would accommodate the Applicant?  
*He had been looking at sites for about three years and Doug Moyers had been coming to this area for longer than that. They had not been able to “get any traction” on the large site on the corner behind this site; the site at the end of the Auto Mall had been considered, but it became a GMC dealership; and on the right hand side off of Auto Mall Parkway, another site did not come together.*
- What would be the duration between Phase I and Phase II?  
*It would vary. They had to recondition the vehicles they sold, so minor work had to be done before putting them on the lot to sell. They planned to have multiple stores around the Bay Area, so that second Phase would come into play when the other stores were open and had mature sales. The closest store was in Fairfield, which opened just two months ago.*
- What kind of car auctions did they do?  
*The auctions were for licensed dealers, only. Their business model was to buy any car that someone brought to them. They made a written offer that was good for seven days and the customer could take it to other dealers. Not all vehicles met CarMax's criteria, so they were sold at auction. They were typically held once every week or every two weeks.*

**Commissioner Bonaccorsi** asked if there were deed restrictions at the Fremont Auto Mall that would prohibit CarMax from locating in the Auto Mall.

**Mr. Moyers** stated that he had been visiting this area since the early 2000s and there was never a site large enough at the Auto Mall, so he did not know the answer to his question.

**Mr. Henderson** also could not speak specifically to his question. However, usually the image of a large used car dealership did not exactly bring the best picture to people's minds. New car dealerships often were not interested in having a used car dealership nearby.

**Commissioner Bonaccorsi** asked if the Applicant would entertain commissioning some kind of plaque that would memorialize Christy Concrete Products, which had terrific historic value. It was a company that was built sometime in 1959 and they made utility boxes, which were known as Christy boxes.

**Mr. Henderson** agreed to commemorate the Christy Concrete Products site in some way.

**Ms. Steinle** added that the remnants from the Christy Concrete plant that needed to be removed were the foundations from the previous buildings.

**Vice Chairperson Jones** asked if the Applicant was exploring other sites for dealerships in the Bay Area. Would the freeway visibility still have been their preference, even if a site had been available at the end of the Auto Mall? Did he know what rough percentage of the Auto Mall businesses involved new versus used car sales?

**Mr. Henderson** agreed that they were exploring other sites for more dealerships. Many people had helped to make that decision.

**Mr. Moyers** added that price had also played a part in their decision. They expected to create an awareness that would attract a much broader population to a location than was, perhaps, currently. Being at the end of a cul-de-sac was compensated by the freeway visibility. If a non-existent, affordable, 15-acre site had been available at the mouth of the Auto Mall, he could have been swayed to locate there. Sometimes such a piece of land cannot be purchased, even if it had a For Sale sign on it. No, he did not have the numbers, but they could be had from the DMV.

**Chairperson Pentaleri** asked what market area would this dealership serve. Did they plan for this dealership to be a regional anchor with additional outlets within the Bay Area?

**Mr. Henderson** guessed it could pull from close to Oakland and to the south on 880 towards the dealerships on Capital Expressway.

**Mr. Moyers** said that the hope was that they would pull customers from as far as San Leandro. Many other Bay Area locations had the same conditions as were available in Fremont.

**Bo Magnussen**, Magnussen Lexus of Fremont, stated that he was the President of the Fremont Auto Mall. His research had shown that CarMax could both help and adversely affect some of the dealerships in the area. Overall, they would bring buyers to the area. If zoning were changed, they could probably locate adjacent to the Auto Mall. However, the Auto Mall was maxed out as originally designed and a zoning change would be needed. The Cisco land had recently been sold to Integral, a large developer. It included hundreds of acres right next to the Auto Mall, which would allow CarMax to be a part of the Auto Mall and pay association dues that would pay for advertising and security, as well as, being more of a neighbor and partner as opposed to it being in one area out by the freeway compared to the Auto Mall, which had been compelled to be set back at the end of the development. Integral should be

contacted by CarMax to ascertain if it could be incorporated into their development plan close to the rest of the auto dealerships on Cushing Parkway.

**Commissioner Bonaccorsi** asked the following:

- If the speaker had a choice, would he prefer to be next to the freeway?  
*Mr. Magnussen agreed that he would.*
- He recalled that the original developer wanted the Auto Mall to be at the end of the development. Was he aware of any deed restrictions that would prohibit used cars from being in the Auto Mall?  
*No.*
- Did he know the percentage of used cars sold as a component of the new car dealerships?  
*It was a very important part of the business, which comprised about 40 percent of the overall sales.*
- The Applicant stated that warranties would be sent to the nearby new car dealerships. Were there certain restrictions on the warranty work that a dealership could perform from a particular manufacturer?  
*If a Lexus owner needed a repair to be done under the warranty, he would take it to the Lexus dealer, which was, usually, a small part of their work.*
- Had anyone from CarMax reached out to the Auto Mall Association?  
*They had not received a call.*

**Commissioner Reed** asked if CarMax would have an unfair competitive advantage by locating next to the freeway or would they actually bring more customers to the area.

**Mr. Magnussen** felt it could be argued both ways. It was certainly a competitive advantage. However, the digital sign let people know that there was a Fremont Auto Mall, along with the exit having the same name. The CarMax sign could also give people another reason to pull into the Auto Mall and shop in Fremont. Will they go to CarMax first and then go to the Auto Mall? Will they miss the left on Christy Street and go all the way down to the Auto Mall and end up at those dealerships first? That was not known. In Roseville, CarMax was right at the entrance of the Auto Mall. The Roseville Auto Mall dealers he had spoken with had experienced a decline in their used car sales. However, they were still very, very profitable and high volume used car retailers. An Auto Mall Chevrolet dealer also had a store in Stockton and they had seen a 20 percent increase in shoppers and buyers when CarMax located in Stockton.

**Chairperson Pentaleri** closed the Public Hearing.

**Principal Planner Morris** added that when the zoning was put into place in the 1980s, the idea was for a new car auto mall. After reviewing the Planned District for the Auto Mall, used car sales were allowed in conjunction with the new car dealership, so the primary purpose had still been new cars sales. The Planned District did allow for a used car dealership for late models; however, those sites were limited to eight or ten acres. CarMax's site was about 16 acres.

**Chairperson Pentaleri** called for a stenographer recess at 8:00 p.m.

**Chairperson Pentaleri** called the meeting back to order at 8:15 p.m.

**Commissioner Bonaccorsi** asked if, regarding the eight acres limitation, a Major Plan Amendment could be requested to allow this project to be part of the Auto Mall.

**Principal Planner Morris** agreed that it could if eight acres were available in the Auto Mall. At this time, the only site available was about two acres across from Magnussen Lexus.

**Commissioner Bonaccorsi** noted that the Applicant was asking the City to deviate from its General Plan with the existing zoning being Industrial. He had always been a strong advocate for retaining the City's industrial property wherever it was located. **Mr. Magnussen** had been very honest. It might help generate sales and it might not. The Applicant had a great product. The issue was that an extraordinary benefit to the sales tax revenue to the City was possible. Undoubtedly, the site was underutilized and was no longer used as a concrete products plant. However, because no economic study had been performed, he was not convinced that this would be in the City of Fremont's best interest for one used car dealer to have a tremendous advantage, that everyone recognized, of freeway visibility cutting into the 40 percent market share of the existing dealers who had played by the rules and had located all the way out in the Auto Mall, which was about a mile from the entrance and had no visibility except for the one freeway sign. He wanted CarMax here in the City, but he could not support the change in the amendment without more information.

**Vice Chairperson Jones** wondered if it was realistic to expect that another industrial type of business might locate on the site as opposed to some other type of retail use, whether it was along the freeway or further down the street from freeway visibility. The City would benefit more from having "something with a retail-type of base in that particular area that goes along with what was already there, as opposed to keeping that site industrial."

**Commissioner Reed** stated that he was thinking along the same lines as **Commissioner Bonaccorsi**. Would it be an unfair competitive advantage or would it help to pull in more customers? Would this project be worth changing the General Plan for? He, also, was struggling because there was no economic report that showed what would really be the impact of this project on the existing dealers. If it could be located closer to the Auto Mall, he would have no problem welcoming them with open arms. He was not willing to take the extreme step of changing the General Plan without more information and he would not support staff's recommendation.

**Deputy City Attorney Rasiah** noted that four votes were required to recommend this item to the City Council. If it were denied, it could still be appealed to City Council.

**Commissioner Leung** stated that CarMax was a reputable company and it would be a good marriage for it to locate within the City. She encouraged the Applicant to reach out to the Auto Mall Association for collaboration, perhaps join the Association and pay their dues and advertise together. Other than the tax benefit, they could bring quality jobs to the City, which would enhance the standard of living for the community of Fremont. The Applicant had made a good choice, because Fremont was one of the best-managed cities in the U.S. It was painful when considering changing the General Plan to accommodate the Applicant, but sometimes when giving away something, the accompanying prosperity could be more than might be imagined.

**Chairperson Pentaleri** observed that having a Planning Commission made up of seven members was obviously necessary, because different people in the community looked at the same information while reaching different conclusions. Like **Commissioner Bonaccorsi**, he appreciated Mr. Magnussen's remarks. The advertising presence frontage along the freeway could be an advantage. However, while listening to the discussion, he worried that perhaps it might be too difficult to do business in the City of Fremont. Everyone agreed that CarMax was a high quality business. CarMax had made every indication that they intended to do business in the Bay Area. This underutilized, vacant site was not particularly inappropriate for the proposed use. If CarMax found a site in one of the neighboring communities, instead of Fremont, many of the same impacts would occur on the existing Fremont businesses. Because they are ready to do business right now, he would not ask them to investigate the feasibility of locating on the other property adjacent to the Auto Mall. He would very strongly support staff's recommendation.

IT WAS MOVED (JONES/LEUNG) AND FAILED BY THE FOLLOWING VOTE (3-2-0-2-0) THE PLANNING COMMISSION – RECOMMENDED THAT THE CITY COUNCIL:

ADOPT THE MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING PROGRAM FOR THE PROJECT AS SHOWN IN EXHIBIT "A," AND FIND ON THE BASIS OF THE WHOLE RECORD BEFORE IT (INCLUDING THE INITIAL STUDY AND ANY COMMENTS RECEIVED) THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;

AND

FIND THAT THE GENERAL PLAN AMENDMENT CONFORMS WITH AND CONTAINS THE REQUIREMENTS PROVIDED FOR IN THE CITY'S PLANNING PROCESSES, CONSTITUTES A SUITABLE AND LOGICAL CHANGE IN THE PLAN FOR PHYSICAL DEVELOPMENT OF THE CITY OF FREMONT, AND IS IN THE PUBLIC INTEREST;

AND

FIND THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN, INCLUDING

THE DESIGNATED GOALS AND POLICES SET FORTH IN THE LAND USE MOBILITY, AND ECONOMIC DEVELOPMENT CHAPTERS OF THE GENERAL PLAN AS ENUMERATED IN THE STAFF REPORT;

AND

FIND THAT THE PROJECT PLANS FOR PRELIMINARY AND PRECISE PLANNED DISTRICT P-2014-59 AS SHOWN IN EXHIBIT “D” AND IN THE ACCOMPANYING PLANNED DISTRICT GUIDELINES AS SHOWN IN EXHIBIT “E” FULFILL THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE;

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ADOPT A RESOLUTION APPROVING A GENERAL PLAN AMENDMENT TO CHANGE THE LAND USE DESIGNATION FROM INDUSTRIAL – TECH TO COMMERCIAL – REGIONAL, AS SHOWN IN EXHIBIT “B;”

AND

INTRODUCE AN ORDINANCE ADOPTING PRELIMINARY AND PRECISE PLANNED DISTRICT P-2014-59 AS SHOWN IN EXHIBIT “C” AND EXHIBIT “D” AND THE ACCOMPANYING PLANNED DISTRICT GUIDELINES AS SHOWN IN EXHIBIT “E,” BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “F;”

APPROVE THE PRELIMINARY GRADING PLAN AS SHOWN IN EXHIBIT “D,” BASED UPON THE FINDINGS AND SUBJECT TO THE CONDITIONS OF APPROVAL SET FORTH IN EXHIBIT “F;”

AND

APPROVE THE PROPOSED REMOVAL AND MITIGATION FOR SEVEN PRIVATE, PROTECTED TREES, PURSUANT TO THE REQUIREMENTS OF THE TREE PRESERVATION ORDINANCE;

AND

DIRECT STAFF TO PREPARE AND THE CITY CLERK TO PUBLISH A SUMMARY OF THE RESOLUTION AND ORDINANCE.

The motion failed by the following vote:

AYES: 3 – Jones, Leung, Pentaleri

NOES: 2 – Bonaccorsi, Reed

ABSTAIN: 0

ABSENT: 2 – Dorsey, Karipineni

RECUSE: 0

## **DISCUSSION ITEMS**

### **Downtown Community Plan Project Update**

**Jessica von Borck**, Urban Initiative Manager, discussed plans to increase public investment in the Downtown, the phasing plan, what the goals were for the future, what had been accomplished, so far, along with private investment and what was on the horizon. When the General Plan was updated in 2011, the community decided that it was important to transition from an auto-oriented community into something that was more strategically urban. Some good

choices were made with regard to how do that. The Downtown was one of those key components. The Downtown Community Plan was adopted in October of 2012 and it was serving as a blueprint for the public and private investment in The Downtown, which included:

- Reduced development fees
- Streamlined entitlement process
- Environmental review work (completed)
- Reduced parking requirements

In her experience, the private sector got “googly-eyed” when they saw a lot of these inventive tools.

She described the size and location of The Downtown and what was hoped to be accomplished in Phase I, Investment, and Phase II, Box Investment. Phase I involved:

- **Imminent Domain** - To acquire the City Bank Building, which would be owned by the City on July 1<sup>st</sup>. A company had worked with the businesses that were located in the building and all of those businesses had found new homes. Groundbreaking would occur in July, which was part of a \$5.8M OBAG grant, which would include the streetscape from State Street to Fremont Boulevard to be built out.
- **OBAG** - \$1.3M of that grant would be used for improving Way Finding Signage through Washington Hospital and the Gateway Plaza and improving pathways, widening sidewalks, adding landscaping and making it a much more pleasant experience. When exiting BART, one had no idea where The Downtown was.
- **Civic Center** - It was not about building space for staff, it was about building public realm; indoor and exterior spaces where the public could come to engage in all kinds of activities. Attending City government meetings, along with the place making component. Three Master Plan Alternatives had been presented to City Council.
- **Place Making** - A place where people really wanted to belong and to come to. The empty street and empty public parking lots on the weekends was a great asset. The Downtown Fremont Eats would occur through partnership with the Chamber of Commerce every Friday night beginning April 25<sup>th</sup> with 20 to 30 food trucks and a band performing once a month. Capital Avenue between State and Liberty Streets would be closed down with an average of 250 to 300 people attending. It was attracting people working in the area, who wished to catch a bite to eat on the way home, and a large portion of people who lived outside of The Downtown but who had walked there. She expected that the new residents of Paragon would begin to participate this year. The Civic Park, which was a part of Paragon, would be activated with food trucks, as well.

The long-standing Downtown events were:

- **The Fremont Festival of the Arts** - Attracted over 400,000 over the course of the weekend.
- **Festival of India**
- **Fourth of July Parade**

**Coming soon:** Working with event programming organization, Two Fish, in depth research would be performed to identify what community artist groups needed display space or an event in which to showcase their craft. Starting in May, The streets would be closed down and a bimonthly investigative pilot event would take place on Saturday evenings, 6:00 to 10:00 p.m.

**From the Private Sector - The Paragon at Downtown,** a 300-unit mixed-use project. By May, they expect to be 100 percent leased. About 85 percent of the units were being leased by GenYers or Gen Xers or Empty Nesters, which were exactly the type of people who were expected to be attracted to a downtown area.

**Private Mixed Use - Hasting Street** was still an entitled project. They had recently come into Planning with a new proposal. **State Street**, the public/private partnership between TMG and Sares Regis, a Bay Area developer was in the negotiation phase. They should break ground sometime around May, 2015.

Additional grant funding was being sought to build out the rest of Capital Avenue.

**Other New Additions were:**

- **Whole Foods** had been an amazing partner - “Success by association,” because they were not within The Downtown boundaries. They had brought a lot of people into The Downtown.
- **Sprouts** had been a great addition.
- **The Corner of Walnut Avenue and Paseo Padre Parkway - The Counter and Pieology** would be opening soon.
- **The Smoking Pig** - Was packed today. It was a Michelin starred restaurant with their first restaurant located in San Jose.

She complimented staff on The Downtown Community Plan, which had been extremely adaptable. While getting the public/private partnership off the ground, the market had changed. Some other potential modifications to the Community Plan may be brought before the Planning Commission because of this. Phase II would begin development along with the rest of the Capital Avenue portion. She planned to reach out to the local educational institutions and service clubs who could provide support.

**Commissioner Bonaccorsi** asked the following:

- Was there any concern if Citibank would appeal the portion of the order having to do with what they would be paid?  
*Citibank no longer owned the property. It was currently owned by Cardinal Equities. Cardinal Equities had waived their right to contest any further objections. They would continue to work on the evaluation with Citibank and through the courts.*
- Was she assured of the July groundbreaking?  
*Yes.*
- What were the other place-making events planned to occur bimonthly starting in May other than Street Eats?



*The art and cultural event format had been created with Two Fish. They currently did all of the Friday night events in downtown San Jose. They would identify, specifically to this community, who the artistic groups were and what sort of venues and formats they needed. It would be Fremont based. She hoped to obtain grants through the National Endowment of Arts.*

**Commissioner Bonaccorsi** suggested that beer be allowed to be served during Street Eats. “It would be nice to be able to have a beer.” Was there a way to get to that?

**Manager von Borck** replied that she was working with the Chamber right now. The work that Two Fish was doing required that they work with the ABC and they would pay for the extra Police. Sometimes it was cost prohibitive, so the Chamber was considering a pilot program. She appreciated the feedback.

**Commissioner Reed** asked what the real anchor draw would be. “What’s our one-minute elevator pitch?” Why should people come to Fremont’s downtown compared to other downtowns?

**Manager von Borck** stated that she wished she had that elevator pitch. It was something that had to evolve. It was a chicken or egg kind of thing. They planned to rely on the community and its feedback in terms of what were the needs and what was expected. The nightlife, the entertainment, was part of it. When looking at city halls or government areas, they tended to be more government focused. The idea was to twist that expectation. This would be about the public realm and how could all the uses be integrated.

**Commissioner Leung** asked the following:

- What was the rough timeframe for the overall Downtown being built out? How many more years would that take?

*Manager von Borck stated that the Downtown Plan expected it to take about 20 years. However, funding as much public infrastructure as possible could expedite that. The downtowns that had moved the most quickly had all the stars aligned, which was where Fremont’s Downtown was at this time. The RDAs had been particularly good at assembling properties, which cities were no longer able to do. So, Economic Development had gone out to as many developers as possible to encourage them to do the assembling that the cities had always done.*

- How were the Downtown events promoted? How was the word gotten out about the food trucks?

*Through the partnerships. The Chamber of Commerce was really that arm. They ran the whole thing. The City “eats the cost for closing down the street and for providing the restroom functions, so they don’t have to out and use port-o-pottys.” The Chamber used their Facebook page, as did the City through the Open City Forum and the events were cross-promoted with all of the summer music festivals. Many of the bands that appeared on Thursday nights also appeared on Friday nights. All of the Park and Rec department materials promoted these efforts.*

- Was The Smoking Pig actually Michelin starred?  
*She should have said that it was Michelin rated.*

**Chairperson Pentaleri** agreed that beer would be a good idea at the Street Eats events. It would also be great to have a bar-be-cue concession, such as The Smoking Pig, Dino's and Das Brew to participate. These were great opportunities to do something good for the businesses and for the community. He wondered if this was the right time to spend money on Way Finding improvements from BART to The Downtown, since the City did not yet have that destination. Was this Way Finding to the future destination? Why advertise something that did not yet exist?

**Manager von Borck** stated studies that involved the employees at The Hub and use BART had shown they needed a way to find The Hub. This was an opportunity to start create the notion of where The Downtown was going to be as opposed to providing signs that said, "Fremont Hub This Way." Employees at Washington Hospital, Kaiser and the Court system also use BART. It was part of the timing.

### MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

**Principal Planner Morris** announced that the next Planning Commission meeting would be held on April 10<sup>th</sup>.

- Report on actions of City Council Regular Meeting  
None

- Information from Commission: Commission members may report on matters of interest.

**Commissioner Reed** asked for a moment of silence in honor of the Dutra family. John Dutra had recently lost his sister.

Meeting adjourned at 9:10 p.m.

SUBMITTED BY:



Alice Malotte  
Recording Clerk

APPROVED BY:



Wayne Morris, Secretary  
Planning Commission